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No. 94-

In the
Supreme Court of the United States
October Term, 1993

LINDA A. SETLECH,

Petitioner,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF EDUCATION, NEW YORK STATE HIGHER EDUCATION AND SERVICES CORPORATION, and COLUMBIA UNIVERSITY,

Respondents.

Respondent Columbia University's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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QUESTIONS PRESENTED

Did the Federal Circuit Court of Appeals properly affirm a lower court order granting summary judgment to the defendant-respondent Columbia University since no grounds supporting pendent party jurisdiction existed and all applicable Statute of Limitations had expired?

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STATEMENT OF THE CASE

Although plaintiff-appellant provides a rather lengthy statement of the case, she fails to advise the court of the facts and circumstances leading to the dismissal of the action against defendant-respondent Columbia University (hereinafter referred to as Columbia) by the United States District Court, Eastern District of New York. [1]

The original action against Columbia University was commenced on or about November 17, 1989.

Jurisdiction was based on 28 USC §1331, 26 USC, Section 1 and 31 USC 3720A (a) and (b).

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[1]Amended petition for certiori received by defendant-respondent Columbia University on March 28, 1994.

Issue was joined by service of an answer on January 22, 1990.

The allegations against Columbia University were based on educational malpractice as well as assault and rape.[2]

Since plaintiff had no basis to invoke federal jurisdiction against Columbia University coupled with the long expired Statutes of Limitations applicable to plaintiff's alleged causes of action, Columbia University moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a cause of action. Said application was granted by the Hon. Reena Raggi of the Eastern District of New York on October 11, 1990 (Appendix B pages B1-B6).

Thereafter, on February 18, 1993 a final

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[2]It is not conceded that educational malpractice is a cognizable cause of action in the State of New York.

judgment of the District Court was entered granting summary judgment to all the defendants.

As was noted by the District Court in the decision of October 11, 1990, on oral argument of the motion by Columbia University plaintiff-petitioner indicated she had no opposition to the application (see Appendix B5-B6).

Despite the failure to oppose the motion, plaintiff again raised issues against Columbia University in her appeal filed with the U.S. Court of Appeals for the Second Circuit as she also does, now, in her present petition seeking certiorari. (See pg. 18 of petition).

The judgment of the Court of Appeals for the Second Circuit filed December 3, 1993 affirmed the judgment of the District Court.

Accordingly, respondent Columbia University respectfully points out that plaintiff-petitioner has not presented any issues against Columbia University which would require review by this court nor is jurisdiction properly invoked against said party.

SUMMARY OF THE ARGUMENT

Plaintiff-petitioner failed to establish subject matter jurisdiction of the Federal Court over respondent Columbia University based on pendent party jurisdiction.

Furthermore, the causes of action alleged against Columbia sounded in tort and/or contract, assault and rape. Plaintiff-petitioner graduated from Columbia University on May 18, 1977 but did not file her complaint until November 21, 1989. The alleged educational malpractice claim, if recognized at all under New York Law necessarily sounded in either contract or malpractice. Under New York Law the former required suit to be commenced within six years (CPLR §213) and the

latter within three years (CPLR §214).

With regards to the petitioner's claim seeking damages for an alleged assault and/or rape on Columbia's campus in 1980, again, any applicable time limitations had long expired.

Suit was governed by either the three year period provided for New York negligence actions (CPLR §214) or the one year period for assault (CPLR §215). The filing of the complaint in 1989 failed to comply with any of the statutory limitations periods.

The District Courts have consistently held, and this court has confirmed, that the requirement of adhering to a state limitation period for commencing suit is not violative of due process as long as the time period

is not unreasonable or so manifestly limited as to amount to a denial of justice.

So too, this court has clearly decided that where there is no independent basis for federal jurisdiction over a party against whom only a state claim is asserted at the inception of the action, there is no pendent jurisdiction. (Finley v. U.S., 490 U.S. 547, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989).

Plaintiff-petitioner has failed to assert a jurisdictional basis against Columbia University which requires review by this court.

ARGUMENT

I. PETITIONER DID NOT ESTABLISH SUBJECT MATTER JURISDICTION OF THE FEDERAL COURT OVER COLUMBIA UNIVERSITY

The main body of plaintiff's petitioner's complaint is directed toward the co-defendants due to the alleged confiscation by the IRS of her 1987 federal income tax refund which was applied towards her defaulted student loans. Columbia University is not charged with having any connection to the income tax refund which formed the basis for federal question jurisdiction (28 USC §1331). Plaintiff improperly attempts to acquire pendent jurisdiction over Columbia University by using the same jurisdictional base without actually naming any federal questions or

establishing a federal cause of action against Columbia. This court has previously addressed the issue in Finley v. United States, 490 U.S. 547, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989) (Scalia, J.) which decision halted a long-standing policy in the Second Circuit allowing "pendent party" claims. The Second Circuit caselaw was initiated by Judge Friendly in Learners Best v. Mormaclynx, 451 F.2d 800 (2nd Cir. 1971), reaffirmed by Judge Friendly in Weinberger v. Kendrick, 698 F.2d 61, (2nd Cir. 1982) cert. den. 464 U.S. 818 and continued as Second Circuit Law in Independent Bankers Assoc. v. Canadaigua National Bank and Trust Co., 757 F.2d 453 (2nd Cir. 1985). However, once this court issued its decision in Finley, the

Second Circuit abandoned its policy of allowing pendent party claims noting that it was "no longer a viable concept" in Staffer v. Bouchard Transportation, Inc., 878 F.2d 638 n.5 (2nd Cir. 1989).

The holding in Finley lays bare the critical distinction between adding claims between parties already independently in court under a statutory grant of federal jurisdiction, and adding new parties over whom no such statutory grant of jurisdiction exists. "Our cases show, however, that with respect to the addition of parties, as opposed to the addition of only claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly."

Finley v. U.S., 490 U.S. at 551, 109 S.Ct. at 2007.

In view of this Court's clearly expressed policy concerning pendent party claims, as well as plaintiff-petitioner's failure to allege any independent basis for federal jurisdiction, the District Court was required to dismiss the complaint against Columbia University.

As the Hon. Reena Raggi held in her decision,

> "[t]he question of pendent party jurisdiction is a complex one, since such jurisdiction is available only if the statute providing federal jurisdiction over the primary claim can also be interpreted as specifically conferring jurisdiction over other claims against additional parties." (citing Roco Carriers Ltd. v. M/V Nurnberg Express, 899 F.2d 1292, 1295 (2nd Cir. 1990); Finley v. U.S., 109 S.Ct. 2003, 2008-09 (1989). (See App. B3)

The decision was properly affirmed by the Second Circuit Court of Appeals.

II. THE COMPLAINT AGAINST COLUMBIA UNIVERSITY WAS PROPERLY DISMISSED FOR FAILURE TO ADHERE TO THE APPLICABLE STATUTORY TIME LIMITS

The District Court properly dismissed plaintiff-petitioner's complaint against Columbia University since the claims were untimely brought. In her original complaint, petitioner made allegations of educational malpractice against Columbia University for failing to provide her with a liberal arts education, as opposed to a conservative education. She made further complaints of assault and rape which allegedly occurred in 1980.

On appeal petitioner made new and additional complaints of lack of equal employment opportunities due to her inadequate education, as well as certain

kidnapping allegations based on 18 USCA §1201. The District Court dismissed the complaint against Columbia University since at the time Petitioner had filed her complaint, all of her causes of action were time-barred.

Without arguing the merits of whether educational malpractice is a cognizable cause of action in the State of New York, even if it were a viable action it would sound in either contract or malpractice. New York Civil Practice Law and Rules requires contract suits to be commenced within six years (N.Y. CPLR §213) and malpractice actions to be commenced within three years (N.Y. CPLR §214). Plaintiff graduated from Columbia University on May 18, 1977. Her complaint was not filed until

November 21, 1989, well outside even the longer statutory time period.

Petitioner's allegations concerning an assault and/or rape on Columbia's campus in 1980 are also time-barred. N.Y. CPLR §215 governs assault actions in the State of New York. Said actions must be commenced within one year.

Petitioner's complaint that Columbia University failed to provide for her safety, sounds in negligence which carries a three year statute of limitations in the State of New York (NY CPLR §214). Both causes of action have long been extinguished by lapse of the applicable time periods.

Petitioner mentions one other cause of action in her petition for

certiorari that was not raised in the original complaint. She claims she was time-barred from seeking relief from 18 USCA §1201. However, Petitioner's reliance on this statute as a cause of action is misplaced. 18 USCA §1201 is a kidnapping statute designed to punish any perpetrator of the crime of kidnapping. The section carries a term of imprisonment for its violation and clearly applies to an individual committing a criminal act and not to a University or corporate entity. However, even if the statute were enforceable against Columbia University, the statute of limitations has again long since expired being governed by 18 USC §3282 which carries a five year statute of limitations.

Since Petitioner failed to adhere to the mandated statutory time periods, the Second Circuit Court of Appeals properly affirmed the District Court's dismissal of the actions against Columbia University.

Petitioner alludes to the fact that she was denied due process by the Court's rigid adherence to the applicable time periods. However, it has been the policy of this court not to grant certiorari on actions challenging state statutory time periods as long as they are not clearly and plainly unreasonable or manifestly so limited as to amount to a denial of justice. (See Caldwell v. Alabama Dry Dock & Shipbuilding Co., 161 F2d 83, cert. denied 68 S. Ct. 59, 332 U.S.759, 92

L.Ed. 345; Baker v. F&F Investment, 420 F.2d 1191 cert. denied 91 S.Ct. 40, 400 U.S.821, 27 L.Ed 2d 49.

Even when the court has granted certiorari it has upheld statutory time periods as not violative of due process, even when based on federal causes of action. (Johnson v. Railway Exp. Agency, Inc., 489 F.2d 525, aff'd 95 S.Ct. 1716, 427 U.S.457, 44 L.Ed. 295), also see Baker v. F of F Investment, supra.

As was held in Caldwell v. Alabama Dry Dock & Shipbuilding Co. supra, "[t]he lawmaking body is the primary judgment as to what is a reasonable time limitation for the bringing of actions, and courts will not inquire into the wisdom of a legislative decision

establishing a period of limitation unless the time allowed is so manifestly insufficient as to amount to a denial of justice, 161 F.2d at 85.

The standard adopted by the Supreme Court has been consistently followed in the District Courts of New York. (Saffioti v. Wilson, 392 F.Supp. 1335 (D.C.N.Y.1975) succinctly states the Point, "While it is undeniably true that access to the courts and an opportunity to be heard are fundamental aspects of procedural due process, it is equally clear that the bar imposed by a validly enacted and reasonable statute of limitations does not deprive a suitor of his day in court in derogation of that clause." 392 F.Supp. at 1339. Petitioner offers no valid grounds for

disruption of the state limitations of time policy on due process grounds.

CONCLUSION

Defendant-respondent Columbia University respectfully requests that plaintiff-petitioner Linda Setlech's petition seeking certiorari be denied in all respects.

Respectfully submitted,

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